

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SIDNEY NAIMAN, on behalf of himself and all
Others similarly situated,

Case No. 2:22 cv 02531

Plaintiff,

- against -

ANSWER

BIG THINK CAPITAL, INC.,

Defendant.
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Pursuant to Fed. R. Civ. P. 12(a), Defendant Big Think Capital, Inc. ("Big Think"), for its Answer to Plaintiff Sidney Naiman's ("Naiman") Complaint states as follows:

NATURE OF ACTION

1. The Defendant can neither admit nor deny the allegations set forth in Paragraph "1" of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

2. The Defendant can neither admit nor deny the allegations set forth in Paragraph "2" of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

3. The Defendant admits the allegations set forth in Paragraph "3" of the Complaint.

4. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "4" of Plaintiff's Complaint.

5. The Defendant can neither admit nor deny the allegations set forth in Paragraph "5" of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

6. The Defendant denies the allegations contained in Paragraph "6" of the Complaint.

7. The Defendant can neither admit nor deny the allegations set forth in Paragraph “7” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

THE PARTIES

8. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “8” of Plaintiff’s Complaint.

9. The Defendant admits the allegations set forth in Paragraph “9” of the Complaint.

JURISDICTION AND VENUE

10. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “10” of Plaintiff’s Complaint and leaves all questions of law for the Court for the time of trial.

11. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “11” of Plaintiff’s Complaint and leaves all questions of law for the Court for the time of trial.

12. The Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “12” of Plaintiff’s Complaint and leaves all questions of law for the Court for the time of trial.

TCPA BACKGROUND

13. The Defendant can neither admit nor deny the allegations set forth in Paragraph “13” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

14. The Defendant can neither admit nor deny the allegations set forth in Paragraph “14” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

15. The Defendant can neither admit nor deny the allegations set forth in Paragraph “15” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

16. The Defendant can neither admit nor deny the allegations set forth in Paragraph “16” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

17. The Defendant can neither admit nor deny the allegations set forth in Paragraph “17” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

FACTUAL ALLEGATIONS

18. The Defendant admits the allegations contained in Paragraph “18” of the Complaint.

19. The Defendant denies the allegations contained in Paragraph “19” of the Complaint, except admits that Defendant does utilize a marketing campaign.

20. The Defendant denies the allegations contained in Paragraph “20” of the Complaint.

21. The Defendant denies the allegations contained in Paragraph “21” of the Complaint.

22. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “22” of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

23. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “23” of the Complaint.

24. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “24” of the Complaint.

25. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “25” of the Complaint.

26. The Defendant denies the allegations contained in Paragraph “26” of the Complaint.

27. The Defendant denies the allegations contained in Paragraph “27” of the Complaint.

28. The Defendant can neither admit nor deny the allegations contained in Paragraph “28” of the Complaint.

29. The Defendant can neither admit nor deny the allegations contained in Paragraph “29” of the Complaint.

30. The Defendant can neither admit nor deny the allegations contained in Paragraph “30” of the Complaint.

31. The Defendant can neither admit nor deny the allegations contained in Paragraph “31” of the Complaint.

32. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “32” of the Complaint.

33. The Defendant denies the allegations contained in Paragraph “33” of the Complaint.

34. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “34” of the Complaint.

35. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “35” of the Complaint.

36. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “36” of the Complaint.

37. The Defendant denies the allegations contained in Paragraph “37” of the Complaint.

38. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “38” of the Complaint.

39. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “39” of the Complaint.

40. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “40” of the Complaint.

41. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “41” of the Complaint.

42. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “42” of the Complaint.

43. The Defendant denies the allegations contained in Paragraph “43” of the Complaint.

CLASS ACTION ALLEGATIONS

44. The Defendant can neither admit nor deny the allegations set forth in Paragraph “44” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

45. The Defendant can neither admit nor deny the allegations set forth in Paragraph “45” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

46. The Defendant can neither admit nor deny the allegations set forth in Paragraph “46” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

47. The Defendant denies the allegations contained in Paragraph “47” of the Complaint.

48. The Defendant denies the allegations contained in Paragraph “48” of the Complaint.

49. The Defendant can neither admit nor deny the allegations set forth in Paragraph “49” of the Complaint, as Plaintiff asserts no allegations of fact. Defendant refers all questions of law to the Court for the time of trial.

50. The Defendant denies the allegations contained in Paragraph “50” of the Complaint.

51. The Defendant denies the allegations contained in Paragraph “51” of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

52. The Defendant denies the allegations contained in Paragraph “52” of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

53. The Defendant denies the allegations contained in Paragraph “53” of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

54. The Defendant denies the allegations contained in Paragraph “54” of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

55. The Defendant denies the allegations contained in Paragraph “55” of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

56. The Defendant denies the allegations contained in Paragraph “56” of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

57. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “57” of the Complaint.

58. The Defendant denies the allegations contained in Paragraph “58” of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

59. The Defendant denies the allegations contained in Paragraph “59” of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

60. The Defendant denies the allegations contained in Paragraph “60” of the Complaint. Defendant refers all questions of law to the Court for the time of trial.

61. The Defendant denies knowledge sufficient to form a belief as to the truth of the allegation in Paragraph “61” of the Complaint.

FIRST CAUSE OF ACTION

62. The Defendant repeats the statements and denials in Paragraphs “1” through “61” in response to Paragraph “62”.

63. The Defendant denies the allegations contained in Paragraph “63” of the Complaint.

64. The Defendant denies the allegations contained in Paragraph “64” of the Complaint.

65. The Defendant denies the allegations contained in Paragraph “65” of the Complaint.

66. The Defendant denies the allegations contained in Paragraph “66” of the Complaint.

FIRST AFFIRMATIVE DEFENSE

67. The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

68. The claims of the Complaint are barred by the failure to mitigate damages.

THIRD AFFIRMATIVE DEFENSE

69. At all times relevant, Big Think acted in good faith.

FOURTH AFFIRMATIVE DEFENSE

70. The actions or inactions of Big Think did not cause Naiman any actual or concrete harm and, therefore, this Court has no subject matter jurisdiction.

FIFTH AFFIRMATIVE DEFENSE

71. The claims of at least some of the putative class members are barred by the doctrines of acquiescence, waiver, estoppel, and ratification.

SIXTH AFFIRMATIVE DEFENSE

72. The claims of the Complaint are barred by Naiman’s unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

73. At all times relevant to the Complaint, the TCPA violated the First Amendment to the United States Constitution.

EIGHTH AFFIRMATIVE DEFENSE

74. Defendant received consent to call the Phone Number.

NINTH AFFIRMATIVE DEFENSE

75. Naiman and the putative class members lack standing.

TENTH AFFIRMATIVE DEFENSE

76. The claims of at least some of the putative class members are barred by the applicable statutes of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

77. To the extent the Complaint seeks class relief, claims of the putative class are barred by the doctrine of judicial estoppel.

TWELFTH AFFIRMATIVE DEFENSE

78. The imposition of statutory damages would violate the Due Process Clause of the Fifth Amendment to the United States Constitution.

THIRTEENTH AFFIRMATIVE DEFENSE

79. To the extent the Complaint seeks class relief, the claims of at least some of the putative class members are barred by res judicata.

ADDITIONAL DEFENSES


80. Big Think gives notice that it intends to rely on such other defenses as may become available during the discovery proceedings in this case and hereby reserves the right to amend this Answer in order to assert such defenses.

WHEREFORE, Answering Defendant respectfully prays for judgment as follows:

- a. Dismissing the Complaint in its entirety, with prejudice;

- b. Awarding the Answering Defendant the costs and disbursements of this action; and
- c. Such other and further relief as this Court deems just, equitable and proper.

Dated: Melville, New York
June 2, 2022



JEFFREY S. ETTENGER, ESQ.
SCHWARTZ ETTENGER, PLLC
Attorneys for Defendant
445 Broad Hollow Road, Suite 205
Melville, New York 11747
631-777-2401

To: PARONICH LAW, P.C.,
Attorneys for Plaintiff
350 Lincoln Street, Suite 2400
Hingham, MA 02043
(617) 485-0018